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Attorney Docket No. 087711-000000US

TOWNSEND and TOWNSEND and CREW LLP

By: \_\_\_\_\_

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

SEIJI MOTOJIMA, ET AL.

Application No. 09/403,894

Filed: October 26, 1999

For: METHOD AND APPARATUS FOR  
MANUFACTURING CARBON FIBER  
COILS

Customer No. 20350

Confirmation No.

Examiner: Stuart L. Hendrickson

Technology Center/Art Unit: 1754

**RENEWED PETITION  
UNDER 37 CFR 1.137(b)**

San Francisco, CA 94111

April 28, 2009

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attention: Office of Petitions

Sir:

This renewed Petition is filed in response to the Official Letter dated March 3, 2009, which noted that a grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

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The Official Letter noted that item (3) was incomplete because it did not include a statement by Mr. Lemond, the attorney who prosecuted the application at the time of its abandonment.

Mr. Lemond left Townsend & Townsend & Crew (TTC) in February 2006 and, therefore, was not available to previously sign a declaration. In view of the specific requirement for a statement from him, however, the undersigned was able to locate Mr. Lemond, and his Declaration ("Lemond Declaration") in support of the present application is now attached hereto.

The Lemond Declaration confirms that the "delay in filing an acceptable reply to the Final Rejection of April 25, 2003 was the result of my error to completely amend independent claim 26 by combining it with allowable dependent claim 31, including intervening claims 27 and 30. I, as well as the Client and/or TTC, had no intention to abandon the Application (Lemond Declaration, page 3, fourth and fifth full paragraphs) during the period from September 25, 2003, when I filed Exhibit C, and October 21, 2004, when I refiled Exhibit C as Exhibit F."

The Lemond Declaration further confirms:

In retrospect I realize that the proper course for me to follow during this time period was to file no later than October 25, 2003 (six months after the date of the Final Rejection) an RCE together with a proper Amendment in which claim 26 was combined with allowable claim 31 and intervening claims 27 and 30 or, following receipt of the Notice of Abandonment (Exh. E), to file a petition for the revival of an unintentionally abandoned application together with an RCE and amendment to claim 26. This omission was an unintentional error on my part which I was not cognizant of at the time or I would have followed the proper course of action. I did not intend and I was not authorized by the Client or TTC to abandon the Application. (Lemond Declaration, page 4, second full paragraph)

Finally, at the bottom of page 4, the Lemond Declaration states that following the filing of Exhibit F on October 21, 2004 Lemond had no further contact or involvement with the application and the file for that is being kept by TTC. As a result, Lemond is not familiar with

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Reply to Office Action of March 3, 2009

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any later developments involving the present application, all of which took place after Lemond left TTC in February 2006.

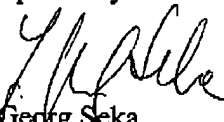
The Lemond Declaration provides what the Official Letter of March 3, 2009 identified as missing under item (3).

All declarations, documentary evidence and statements filed herein unequivocally set forth that there never was any intention on the part of anybody associated with this application, from the applicant (Client) to TTC, including its attorneys and staff, to abandon this application, although unintentional errors were committed that led to the abandonment. To the contrary, all evidence of record clearly demonstrates that bona fide attempts were made to place the application in condition for allowance.

In view of the foregoing, applicants request an early grant of this Petition and the further processing of this application.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (415) 273-4730 (direct dial).

Respectfully submitted,

  
J. Georg Seka  
Reg. No. 24,491

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PATENTAttorney Docket No. 87711  
Client Ref. No. P3P99022US

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

SRIM MOTOJIMA, ET AL.

Application No. 09/403,894

Filed: October 26, 1999

For: METHOD AND APPARATUS FOR  
MANUFACTURING CARBON FIBER  
COILS

Customer No. 20350

Confirmation No.

Examiner: Stuart L. Hendrickson

Technology Center/Art Unit: 1754

DECLARATION OF KEVIN T. LEMOND  
IN SUPPORT OF RENEWED PETITION  
FOR REVIVAL OF UNINTENTIONALLY  
ABANDONED PATENT APPLICATION

I, Kevin T. Lemond ("Lemond"), declare as follows:

I am presently a shareholder in the law firm of Schwabe, Williamson & Wyatt of Portland, Oregon, where I practice patent law.

Until February 28, 2006, I practiced patent law as a partner in the firm of Townsend & Townsend & Crew ("TTC") of San Francisco, California.

I have been made aware by J. Georg Seka ("Seka") of TTC that the above-referenced patent application ("the Application") became abandoned for failure to respond to a Final Rejection dated April 25, 2003, that he had filed a Petition to revive the Application for unintentional abandonment, and that the U.S. Patent and Trademark Office required a statement from me concerning my involvement in the prosecution of the Application in order to further consider the Petition. At the time I left TTC in February 2006 I was not aware that the above-referenced Application became abandoned; this was brought to my attention by Seka when he informed me thereof in March 2009.

I am not in the possession of and I have not reviewed the file for the Application. However, Seka forwarded to me a copy of the pending Renewed Petition for Revival of Unintentionally Abandoned Patent Application dated March 28, 2008 (the "Petition") and a copy of Seka's Declaration in support thereof, also dated March 28, 2008.

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I recall the Application, that there was a problem of having an Amendment After Final entered, and correspondence with the Patent Office regarding the same. Reading the Petition and the Seka Declaration and their references to documents filed in support of the Petition refreshed my recollection of what occurred during the prosecution of the Application. The exhibit numbers and letters mentioned by me refer to the exhibits used in the Petition.

Based on the foregoing, I further declare:

Following the filing of the Application on behalf of Onda Techno International Patent Attorneys of Japan ("Client") and the receipt of a first Office Action dated March 6, 2001, Seka transferred responsibility for the Application to me, and I responded to the first Office Action with an Amendment dated July 24, 2001. I was responsible for and continued to handle all matters in connection with the ongoing prosecution of the Application until I left TTC on February 28, 2006.

On November 12, 2002, a non-final Office Action (Exh. A) issued in which claims 19, 24 and 25 were allowed and claims 26-28, 30, 32 and 36 were rejected. Claims 29 and 31 were objected to because they depended from rejected parent claims, but they were not rejected over the prior art. In response to this Office Action, I filed an Amendment which canceled claim 31 and added its subject matter (but not the subject matter of intervening claims 30 and 27) to claim 26 with the intention to render claim 26, and therewith claims 27-30, 32-34 and 36 that depended from claim 26, allowable.

A Final Rejection dated April 25, 2003 (Exh. B) continued to allow claims 19, 24 and 25 but rejected claims 26-30, 32 and 36, claim 31 having been canceled at that point because it had been incorporated in claim 26. The Final Rejection contained the note that "claim 31 was not incorporated; the claim language was changed".

In my letter dated May 28, 2003 (Exh. 1), I reported the Final Rejection to the Client and explained that the subject matter of claim 31 was not properly incorporated, as its language was changed, which required a slight modification of claim 26 in order to place it in condition for allowance. The letter noted that a response was due by July 25, 2003 and that the six-month statutory period for responding to the Office Action would end October 25, 2003. The Client responded with a letter dated June 6, 2003 (Exh. 2) and asked me to file a suitable

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response by July 25, 2003. I filed the response on September 25, 2003 in the form of an Amendment Under 37 CFR 1.116 (Exh. C) which included an amendment of claim 26 and stated in relevant parts:

In the previous amendment, applicants amended claim 26 to include the subject matter of claim 31. However, applicants neglected to include the subject matter of claim 30 (upon which claim 31 depended) and claim 27 (upon which claim 30 depended). Accordingly, applicants have amended claim 26 to include the subject matter of claims 27 and 30. It is respectfully submitted that claim 26 is now allowable as indicated by the Examiner in the Office Action mailed November 12, 2002. Claims 32 and 36 depend on claim 26 and therefore are also allowable for at least the reasons claim 26 is allowable. (Exh. C, page 4, last paragraph)

With a letter dated September 26, 2003 (Exh. 3), I forwarded to the Client a copy of the Amendment filed September 25, 2003 (Exh. C) and noted that in the event the Amendment were not entered, a request for continued examination or a new continuation, divisional or continuation-in-part application must be filed by October 25, 2003 to prevent the Application from becoming abandoned.

As stated in Exhibit C, I believed that I had fully responded to the Final Rejection and placed the Application in condition for allowance by combining claim 26, which at that point already included claim 31, with intervening claims 27 and 30. For reasons that I cannot recall or explain, I only combined then-pending claim 26 (which already included claim 31) with claim 27, but not with claim 30, although claim 30 had been canceled in the Amendment (Exh. C).

The delay in filing an acceptable reply to the Final Rejection of April 25, 2003 was the result of my error to completely amend independent claim 26 by combining it with allowable dependent claim 31, including intervening claims 27 and 30.

I, as well as the Client and/or TTC, had no intention to abandon the Application.

On November 25, 2003, an Advisory Action (Exh. D) was mailed and I am informed that it was received by TTC. I do not recall ever having seen this Advisory Action or having taken any action in response thereto.

Subsequent thereto, a Notice of Abandonment dated June 17, 2004 (Exh. E) was brought to my attention. It stated that the Application was abandoned for failure to timely file a

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proper reply to the Final Rejection mailed on April 25, 2003. I recall that at that time I was under the impression that the Patent Office did not receive the Amendment (Exh. C) because if it had received it the Application would have been allowed. In view thereof, I asked my secretary, Lata Olivier, sometime prior to October 21, 2004 to refile the Amendment of September 25, 2003 (Exh. C).

I, as well as the Client and TTC, had no intention to abandon the Application during the period from September 25, 2003, when I filed Exhibit C, and October 21, 2004, when I had Exhibit C refiled as Exhibit F.

In retrospect I realize that the proper course for me to follow during this time period was to file no later than October 25, 2003 (six months after the date of the Final Rejection) an RCE together with a proper Amendment in which claim 26 was combined with allowable claim 31 and intervening claims 27 and 30 or, following receipt of the Notice of Abandonment (Exh. E), to file a petition for the revival of an unintentionally abandoned application together with an RCE and amendment to claim 26. This omission was an unintentional error on my part which I was not cognizant of at the time or I would have followed the proper course of action. I did not intend and I was not authorized by the Client or TTC to abandon the Application.

Following the filing of the Amendment on October 21, 2004 I have no recollection that I had any further contact or involvement with the Application and the file for it kept by TTC, and I am not familiar with any developments involving the Application that took place after I left TTC in February 2006.

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I declare under the penalty of perjury that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, having been warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 USC §1001, and may jeopardize the validity of this application or any patent resulting therefrom.

Dated: 4/20/09

  
Kevin T. Lemond

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